

**COURT OF COMMON PLEAS  
FOR THE STATE OF DELAWARE  
KENT COUNTY COURTHOUSE  
DOVER, DELAWARE 19901  
PHONE: (302) 739-4618**

**CHARLES W. WELCH, III  
JUDGE**

April 6, 2011

Mr. Charles F. Dimeglio  
3034 S. DuPont Blvd.  
Smyrna, DE 19977

John A. Sensing, Esq.  
Potter Anderson & Corroon, LLP  
Hercules Plaza – Sixth Floor  
1313 N. Market Street  
Wilmington, DE 19801

RE: Charles F. Dimeglio v. Pinnacle Rehabilitation and Health Care  
C.A.No.: CPU5-10-002534

Decision on Motion to Dismiss Appeal

Dear Mr. Dimeglio and Mr. Sensing:

This matter involves a civil appeal for a trial *de novo* from a Justice of the Peace court decision which entered judgment in appellee's favor. Appellee now moves this court to dismiss the appeal pursuant to Court of Common Pleas Civil Rule 12(b)(6) for appellant's failure to state a claim upon which relief can be granted. After careful consideration, the appellee's motion to dismiss is granted.

**FACTS**

Appellee is a rehabilitation and nursing facility where the appellant has resided for over three years. The parties entered into an "Admission Agreement" ("Agreement") which governs their relationship. On July 22, 2010, appellant filed a suit against appellee in the Justice of the Peace court seeking reimbursement of costs associated with repairs to his motorized scooter. On November 5, 2010, the Justice of the Peace court dismissed appellant's complaint at the close of his case.

Appellant filed a timely appeal of the Justice of the Peace court decision to this court. Appellant contends that the Justice of the Peace court's decision was erroneous and that Medicaid requires appellee to reimburse him for the scooter repairs. On December 22, 2010, appellee moved this court to dismiss appellant's appeal for failure to state a claim upon which relief can be granted. This court heard oral argument on appellee's motion on January 14, 2011. During the hearing, appellant made several references to appellee's obligations under the law. However, appellant did not provide this court with adequate legal authority in support of his claim. The court sent appellant a letter on January 31, 2011, requesting that he provide it with legal authority supporting his claim. The appellant has failed to respond to the court's correspondence.

### **DECISION**

"When deciding a motion to dismiss a complaint for failure to state a claim, made pursuant to Court of Common Pleas Civil Rule 12(b)(6), the Court should not dismiss the complaint unless plaintiff would not be entitled to recover under any reasonably conceivable set of circumstances." *Lovett v. Bernstein*, 2010 WL 2643071, at \*2 (Del. Com. Pl.) (quoting *Jackson v. Fleming*, 2005 WL 2090773, at \*1 (Del. Super.)). A review of appellant's complaint under this standard makes clear that he has not set forth a viable claim and can not recover at trial. Appellant's claim that Medicaid requires the appellee to reimburse him for the repairs to his scooter is without merit. The court is unaware of any Medicaid provision which requires appellee to reimburse appellant for such repairs. In addition, the complaint does not include any other applicable legal authority which supports appellant's contention that appellee is obligated to reimburse the appellant. Appellant also failed to provide the court with applicable legal authority supporting his claim per the court's January 31, 2011, request.

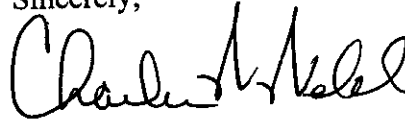
The court further notes that paragraph three of the Agreement conspicuously states that appellee assumes no liability or responsibility for any of appellant's valuables. The court finds that this language serves as a valid disclaimer of appellee's obligations and responsibilities with respect to appellant's scooter.

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Given its conclusions of fact and law, the court finds that appellant has failed to state a claim upon which relief can be granted in this case. Thus, the appellee's motion to dismiss the appeal is granted.

**IT IS SO ORDERED.**

Sincerely,

A handwritten signature in black ink, appearing to read "Charles W. Welch, III". The signature is fluid and cursive, with the first name "Charles" being the most prominent part.

Charles W. Welch, III

CWW: